

Medicare Prescription Drug, Improvement, and Modernization Act of 2003
**PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND
CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-
TERM CARE FACILITIES OR PROVIDERS**

Section 307

Background

Currently there is no statutory requirement that long-term care facilities and providers conduct background checks on prospective employees. Nursing homes are prohibited through regulation from hiring individuals who have been found guilty of abusing, neglecting or mistreating residents by a court of law or who have a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. Some states require background checks under state law, but these requirements vary in terms of the facilities and providers, and types of workers, included.

New Provision in the MMA

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) establishes a pilot program to conduct national and state background checks on workers in long-term care settings. This provision appropriates \$25 million for a 3-year pilot program for national and state background checks on employees of long-term care facilities or providers. No more than 10 states would be selected for the pilot. The pilot program starts immediately upon enactment of the bill and continues through Fiscal Year 2007.

Goal

- The pilot program would identify efficient, effective and economical processes for long term care facilities or providers to conduct background checks on employees with direct access to residents and patients. The pilot would only apply to long-term care facilities and providers that participate in the Medicare and/or Medicaid programs. The facilities and providers included in the pilot are: nursing homes, home health agencies, providers of hospice care, providers of personal care services, residential long-term care providers, and intermediate care facilities for the mentally retarded. Self-directed care arrangements are excluded from the pilot.

Basic Elements of Background Checks

- Pilot states would develop procedures for conducting the background checks. These procedures should include certain elements. Facilities and providers would notify potential employees of the requirement to conduct a background check, obtain their authorization to conduct the check, and collect information such as a statement disclosing any disqualifying information and a rolled set of fingerprints. Then, facilities and providers would start the background check process by checking available registries such as the Federal Healthcare Integrity Practitioner Data Bank

(HIPDB) and the state Nurse Aide Registry. If no disqualifying information were found through these checks, then the facility or provider would request the state to conduct state and national level checks (FBI records).

Disqualifying Information

- Disqualifying information is information about a conviction for a relevant crime or a finding of abuse, neglect or misappropriation of resident or patient property. A conviction for a relevant crime includes crimes that would be reported to the HIPDB (i.e., health care fraud, felony relating to controlled substances), and other offenses as defined by the pilot states. A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.

Provisional Employment

- Facilities and providers may provide for a period of provisional employment while a new employee is undergoing a background check. During that period, the facility or provider would provide supervision of the provisional employee. The level of supervision would be determined by the pilot states with special consideration given to small rural facilities and providers as well as to home health agencies and providers of hospice care. To study the impact of the provisional employment period, the Secretary will select one state for the pilot that does not provide for a period of provisional employment.

- **Evaluation of Pilot**

The Secretary of Health & Human Services, in consultation with the Attorney General, would evaluate the pilot. The evaluation would cover a number of topics, including: the procedures implemented by pilot states to conduct the checks; the costs and how they should be allocated across the Medicare and Medicaid programs as well as to providers and workers; the effectiveness of checks conducted by employment agencies; and the extent to which the checks lead to any unintended consequences such as a reduction in the available workforce.